

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RICHARD HOFFER, :
Plaintiff(s), : ORDER
-against- : 18 Civ. 1197(LMS)
CITY OF YONKERS, et al., :
Defendant(s) :
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Defendants have filed a motion in limine (DE 62) which has been responded to by Plaintiff (DE 67). No reply has been filed. For the reasons set forth below, the motion is denied without prejudice to renew on the same papers, but with the addition of either a viewable copy of the recording in question or a complete transcript of that recording.

The Complaint in this case was filed on February 9, 2018. DE 1. The matter was assigned to the Honorable Nelson S. Román, United States District Judge. On May 29, 2018, Judge Román referred the matter to the undersigned. DE 20. On July 20, 2018, the parties appeared before the undersigned for the first conference. On August 21, 2018, an Amended Complaint was filed. DE 32. On January 15, 2019, the parties consented to the jurisdiction of the undersigned Magistrate Judge for all purposes. DE 43. The matter was originally scheduled for trial on October 21, 2019, then was adjourned to January 14, 2020, because Plaintiff's counsel had a family emergency that required her to be out of state for a time. DE 47. The trial was adjourned again, to the week of March 30, 2020, due to Plaintiff's counsel's medical issues. DE 49. On March 13, 2020, the Court adjourned the trial without date, in light of the District Court's Order suspending jury trials for thirty days, because of the coronavirus and the

Governor's stay at home order. DE 59. The pending motion in limine (DE 55)¹ was initially filed by Defendants on March 11, 2020, along with proposed voir dire questions and requests to charge, with proposed verdict form. (DE 56, 57). Subsequently, on May 12, 2020, the trial was adjourned until at least September, 2020, with the remaining pre-trial documents to be filed no later than 21 days before any scheduled trial date. DE 60. Pursuant to the Court's Order, the motion in limine was refiled June 15, 2020. DE 62, 63. Plaintiff's response was filed on July 20, 2020. DE 67. In accordance with the Court's May 12, 2020, Order, no reply was permitted. DE 60.

The undersigned has planned to retire on September 30, 2020, for more than one year, and is expecting to do so. The Southern District Court is planning to reopen sufficiently to commence jury trials in October of this year, with priority given to criminal cases, in light of speedy trial concerns. Thus, this case will not go to trial before the undersigned, but is likely to proceed to trial before my successor, who will automatically be assigned to the undersigned's caseload, except for matters in which he may recuse himself. Moreover, in light of the limited space for jury trials in the White Plains Courthouse, which is currently undergoing construction on several floors, as well as the need to give priority to criminal cases, it is anticipated that the earliest this case will proceed to trial will be February, 2021.

The issues raised in the motion in limine are (a) whether evidence of one Defendant's post-incident disciplinary action and the acts underlying it are admissible in the trial of this matter, and (b) whether a certain "audio/video tape made by plaintiff's fiancée . . . at some unknown time" (Memorandum of Law, DE 63, at p. 4) is admissible. As these decisions may

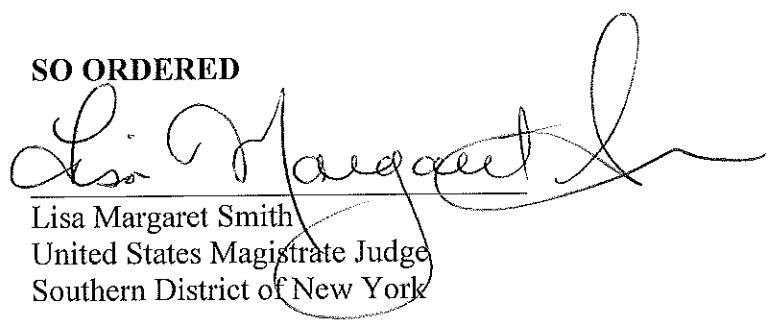
¹ The motion was originally filed incorrectly, and had to be refiled on the Court's ECF system. DE 62, 63.

directly affect the conduct of the trial, which will not take place before the undersigned, I conclude that I should deny the motion, without prejudice to renewal by Defendants on the same papers. However, Defendants' counsel is directed to include with the renewed motion a copy of the "audio/video" recording, in viewable format without the use of special equipment or software, and/or a complete transcript of the recording, for review by the successor of the undersigned. The schedule for such a motion in limine will be set at a further conference to be conducted by my successor.

This constitutes the Decision and Order of the Court. The Clerk is directed to terminate the gavel at DE 62.

Dated: September 16, 2020
White Plains, New York

SO ORDERED



Lisa Margaret Smith
United States Magistrate Judge
Southern District of New York